

## **REMARKS**

This Amendment and Response is filed in reply to the Office Action dated September 1, 2004. By this Amendment, claims 1, 5-7, 13, and 23 are amended, claim 14 is canceled, and new claims 27 and 28 are added, leaving claims 2-4, 8-12, 15-22, and 24-26 unchanged.

On page 2 of the Office Action, claims 1-5, 8, 13, 15-18, 20, 23, 24, and 26 are rejected under 35 U.S.C. §102(b) as being anticipated by United States Patent Number 6,052,851 issued to Kohnle (hereinafter "Kohnle"). Also, on pages 2 and 3 of the Office Action, claims 1-26 are rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent Number 5,081,728 issued to Skinner (hereinafter, "Skinner").

Claim 1 is hereby amended, and calls for (amendment marks not shown):

A support cushion comprising:

- an elastic core having a first surface, a second surface, and thickness defined by the first surface and the second surface;
- a first cover portion surrounding the elastic core;
- a pillow top surface adjacent the first surface of the elastic core, the pillow top surface including a plurality of foam strips; and
- a second cover portion at least partially covering the pillow top surface, the second cover portion attached to at least one of the first cover portion and the elastic core.

As discussed in greater detail in the present application, some embodiments of the present invention provide a support cushion having a first cover portion surrounding an elastic core and a second cover portion at least partially covering a pillow top surface having foam strips, wherein the second cover is attached to the first cover portion and/or the elastic core.

In contrast, Kohnle discloses a mattress 10 having a layer of urethane foam 16 with different transverse regions 20a-20d located between two layers of abrasion resistant material 14, 18, all of which rest atop an egg crate foam layer 12. Kohnle fails to teach, describe, or suggest both a first cover portion surrounding the egg crate foam layer 12 (compared by the Examiner to the elastic core claimed in claim 1) and a second cover portion at least partially covering the

layer of urethane foam 16 (compared by the Examiner to the pillow top surface claimed in claim 1).

Even if Kohnle did disclose or suggest first and second cover portions positioned to perform the surrounding and covering functions just described (and the Applicant respectfully submits that this is not the case), neither abrasion resistant material layer 14, 18 is attached to the other abrasion resistant material layer 18, 14 or to the egg crate foam layer 12. The abrasion resistant material layers 14, 18 are separated from one another by the intermediate layer of urethane foam 16. In addition, Kohnle fails to disclose or suggest attachment of either abrasion resistant material layer 14, 18 to the egg crate foam layer 12. The disclosure of Kohnle only teaches that the abrasion resistant and urethane foam material layer structure 14, 16, 18 rests upon the egg crate foam layer 12. Kohnle also fails to disclose or suggest why the above-described relationship between cover portions, an elastic core, and a pillow top surface would be desirable, instead focusing only upon the protection function of the urethane foam layer 16 by the abrasion resistant material layers 14, 18.

Skinner discloses a mattress 10 and mattress cover 14 in which the mattress cover 14 covers a series of foam blocks 12, and is fastened to the end surfaces of the foam blocks 12 or to the side of a bed frame 40 in order to retain the foam blocks 12 in spaced arrangement atop the bed frame 40 (see column 4, lines 17-25, column 5, lines 33-37 and 48-55, column 5, line 66 to column 6, line 3, and column 6, lines 32-34 of Skinner). The mattress cover 14 of Skinner is not adapted to cooperate with a cover of an adjacent elastic core or to be permanently or releasably secured to an adjacent elastic core. In this regard, Skinner fails to teach, describe, or suggest any mattress cover or cover portion that at least partially covers a pillow top surface and that is also adapted for attachment to an elastic core cover, elastic core cover portion, and/or an elastic core as claimed in amended claim 1.

Skinner also fails to disclose or suggest why such a relationship between components of a support cushion would be desirable, instead focusing upon releasable connection between the flap portions 20 of the mattress cover 12 and the end surfaces of the foam blocks 12 or bed frame sides. This distinction results at least in part by the significantly different nature of the Skinner

mattress and mattress cover and the support cushion claimed in amended claim 1. The support cushion claimed in amended claim 1 includes a pillow top surface – a term typically used in the art to refer to an element or structure atop a mattress. On the other hand, the structure disclosed by Skinner is the mattress, and is intended to be placed directly upon a frame.

In light of the above remarks and for other reasons not discussed herein, the Applicant respectfully submits that claim 1 is novel and non-obvious over Kohnle and Skinner. Withdrawal of the 35 U.S.C. §102(b) and 35 U.S.C. §103(a) rejections of amended claim 1 is therefore respectfully requested.

Claim 13 is hereby amended, and calls for (amendment marks not shown):

A pillow top layer for a support cushion having an elastic core, the elastic core having a length and a width wherein the length is greater than the width, the pillow top layer comprising:

a plurality of foam strips having a length, a width, and a thickness, the width of each foam strip is substantially the same as the width of the elastic core and greater than the length of each foam strip, each of the plurality of foam strips positioned side-by-side to define a substantially gapless structure, wherein the combined length of the plurality of strips is substantially the same as the length of the elastic core; and wherein the strips are separated from one another by a layer of material.

Claim 23 is also hereby amended, and calls for (amendment marks not shown):

A support cushion comprising:

an elastic core; and

a pillow top portion adjacent to the core, the pillow top portion comprising a plurality of foam strips positioned side-by-side and separated from one another only by a material to form a non-continuous but gapless layer on top of the elastic core.

As discussed in greater detail in the present application, some embodiments of the present invention provide a pillow top layer or a support cushion having a pillow top portion comprising a plurality of foam strips in side-by-side relationship to define or form a gapless structure or layer, wherein the foam strips are separated from one another by a material.

In contrast, Kohnle discloses a mattress 10 having a conforming layer of urethane 16 having four transverse regions 20a-20d, each of which abut and are in contact with at least one adjacent region 20a-20d. Kohnle fails to teach, describe, or suggest such a structure in which the transverse regions 20a-20d (compared by the Examiner to the plurality of foam strips claimed in claims 13 and 23) are separated from one another – whether by a material or otherwise. Kohnle also fails to teach or suggest the desirability of a pillow top in which the transverse regions 20a-20d are separated from one another in any manner.


As described above, Skinner discloses a mattress 10 and mattress cover 14 in which the mattress cover 14 covers a series of foam blocks 12, and retains the foam blocks 12 in spaced arrangement atop a bed frame 40 (see column 4, lines 17-25, column 5, lines 33-37 and 48-55, column 5, line 66 to column 6, line 3, and column 6, lines 32-34 of Skinner). In this manner, gaps (unnumbered) are intentionally defined between adjacent foam blocks 12. Such gaps exist to enable a user to insert portions of the user's body between the foam blocks 12. "Since cover 14 is not a conventional, continuous planar sheet, the present invention enables a user to insert body appendages, such as arms or feet, between adjacent mattress blocks 12 after cover 14 is fitted over mattress 10." Skinner, column 4, lines 32-36. Skinner therefore teaches away from a pillow top layer or a support cushion having a pillow top portion in which side-by-side strips of foam are positioned to define or form a gapless structure or layer as claimed in amended claims 13 and 23. Changing the Skinner mattress 10 and mattress cover 14 to be gapless would defeat a primary function of the Skinner device: to receive body parts of a user. For at least this reason, Skinner also fails to teach or suggest the desirability of a pillow top in which the foam blocks 12 are separated from one another in any manner

In light of the above remarks and for other reasons not discussed herein, the Applicant respectfully submits that claims 13 and 23 are each novel and non-obvious over Kohnle and Skinner. Withdrawal of the 35 U.S.C. §102(b) and 35 U.S.C. §103(a) rejections of amended claims 13 and 23 is therefore respectfully requested.

Claims 2-12, 15-22, and 24-26 are each ultimately dependent upon amended claims 1, 13, and 23, respectively, and are therefore allowable based upon amended claims 1, 13, and 23 and upon other features and elements claimed in claims 2-12, 15-22, and 24-26 but not discussed herein. Accordingly, withdrawal of the 35 U.S.C. §102(b) and 35 U.S.C. §103(a) rejections of claims 2-12, 15-22, and 24-26 is respectfully requested.

In view of the amendments and remarks presented herein, it is respectfully submitted that the claims as amended are in condition for allowance. The Applicant requests that the Examiner telephone the attorneys of record in the event a telephone discussion would be helpful in advancing the prosecution of the present application.

Respectfully submitted,

By   
Christopher B. Austin  
Registration No. 41,592

Michael Best & Friedrich LLP  
100 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-4108  
(414) 271-6560

X:\clientb\070163\9157\A1092526.1